

**Report to the Joint Standing Committee on  
Environment and Natural Resources  
130<sup>th</sup> Legislature**

# **Review of Development Permit Processing**

***November 1, 2021***

---

Contact: Nicholas D. Livesay, Director  
Bureau of Land Resources  
Phone: (207) 530-0965



**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
17 State House Station | Augusta, Maine 04330-0017  
[www.maine.gov/dep](http://www.maine.gov/dep)

Pursuant to Public Law 2021, chapter 62, the Department of Environmental Protection has evaluated permit processing and processing times under three of Maine's core environmental laws:

- Site Location of Development Law, 38 M.R.S. §§ 481 through 489-E;
- Natural Resources Protection Act, 38 M.R.S. §§ 480-A through 480-JJ; and
- Stormwater Management Law, 38 M.R.S. § 420-D.

This report summarizes the Department's findings and discusses the relationship between Department staff levels and delivery of service.

## **I. Background**

### **A. Statutory Framework**

Site Location of Development Law (Site Law) – Under this law, the Department is responsible for reviewing permit applications for all development of state or regional significance that may substantially affect the environment and all larger-scale subdivisions, generally commercial subdivisions with five or more lots and residential subdivisions with 15 or more lots. Effectively, in addition to these larger subdivisions, all development that includes more than three acres of impervious area or occupies more than 20 acres requires a Site Law permit from the Department. These thresholds triggering Site Law review may be exceeded by a single development proposal or in aggregate by multiple, related proposals over time.

Examples of development that commonly requires a Site Law permit include: larger apartment building complexes, shopping centers, new and expanded manufacturing facilities, schools, utility infrastructure such as transmission lines and pipelines, land-based aquaculture, wind power, and solar power.

Natural Resources Protection Act (NRPA) – Under this law, the Department is responsible for reviewing permit applications for construction and earth moving activities in and adjacent to certain environmental resources identified in statute as protected natural resources. The potential impact of development activities on freshwater wetlands, coastal wetlands (including the ocean), rivers, streams, brooks, lakes, and ponds are evaluated by the Department as part of the NRPA permitting process. Activities potentially affecting coastal sand dune systems, significant wildlife habitat (as defined in statute), fragile mountain areas, and community public water system protection areas typically require review under NRPA, as well.

Examples of activities that commonly require a NRPA permit include: installation of riprap or a retaining wall along oceanfront property; construction of a residential pier; clearing of a forested wetland for shade management associated with a solar project; and the filling a wetland for construction of an access road to a development, extension of an airport runway, expansion of a school or business, and establishment of a new commercial or industrial facility.

Stormwater Management Law – Under this law, the Department is responsible for reviewing permit applications for construction activity that disturbs an acre or more of land. However, if

the development proposal is large enough to require a Site Law permit, the development is exempt from the Stormwater Management Law and potential stormwater impacts are reviewed and evaluated as part of the Site Law permitting process.

Examples of projects requiring a Stormwater Management permit include: construction of a small office building and associated parking lot or installation of a distributed generation (<5 MW) solar project that occupies 20 acres or less.

Relationship Between These Laws – Site Law, NRPA, and the Stormwater Management Law all operate together. It is not uncommon that a development proposal large enough to require review under Site Law also impacts a protected natural resource, such as a wetland, requiring a NRPA permit, as well. When both a Site Law permit and NRPA permit are required for a single development, the Department issues both permits as part of a single document or order. This order addresses the different legal standards contained in the two governing laws and accompanying rules.

The legal relationship between Site Law and the Stormwater Management Law is slightly different, but the practical effect is the same. Projects large enough to require a Site Law permit are exempt in statute from the Stormwater Management Law. The law, however, specifies that Site Law projects must meet stormwater standards. The result is that stormwater review is conducted as a part of the review of all Site Law applications, but a separate stormwater permit is not issued for these developments. Only projects that are large enough to trigger the Stormwater Management Law by disturbing an acre or more, but small enough not to trigger Site Law, receive a Stormwater Management permit.

If a project requires both a Stormwater Management permit and NRPA permit, both permits are issued as part of a single order.

## **B. Permit Types**

Individual Permit v. Permit-by-Rule (PBR) – Permits issued under these three laws fall into two broad categories, permits-by-rule or individual permits.

Projects with minimal environmental impact and minimal risk may be authorized through a PBR. Presently, PBRs are issued for qualifying projects under NRPA and the Stormwater Management Law. There are no Site Law PBRs at this time. All PBR applications are reviewed by staff to ensure that all the necessary submissions are included and that the project qualifies for PBR. Many PBR applications are completed and submitted by property owners, as opposed to being prepared by consultants. Staff frequently work with these individuals to help them understand how to design their project to qualify for a PBR and what materials they need to submit along with their application form. Staff also visit individuals' property as part of assisting them through the PBR process. Once a PBR application is submitted, absent notification from the Department that a PBR application is deficient or that an individual permit is required, a PBR is deemed approved and becomes effective 14 days after receipt by the Department.<sup>1</sup>

---

<sup>1</sup> Land Division staff also receive and review Notices of Intent to Comply with the Maine Construction General Permit (NOIs). This general permit covers certain construction activity that disturbs more than

All other permits are individual permits, meaning an order is drafted by staff and signed by the Commissioner or her designee, typically the Director of the Bureau of Land Resources. As part of this process, the project manager commonly meets with the applicant as part of separate pre-application and pre-submission meetings, visits the development site, reviews the application materials and identifies any additional information needs, coordinates technical review within the Department (e.g., with stormwater engineers) and with other agencies (e.g., Department of Inland Fisheries and Wildlife (DIFW), Department of Marine Resources (DMR), Maine Historic Preservation Commission (MHPC), Maine Natural Areas Program (MNAP), Maine Geological Survey (MGS)), evaluates compliance with all the applicable review standards, and drafts a recommended order.

New Permits, Permit Amendments, Minor Revisions, and Other Orders – Individual permits fall into different categories. One category of permit is a new permit. Once issued, a permit may be modified either through a permit amendment or minor revision. A permitting decision, in the form of a signed, written order, is required for new permits, permit amendments, and minor revisions. A permit may be modified with a minor revision when the proposed change is small and meets certain criteria established in rule, such as decreasing or eliminating environmental impact. All other permit modifications require an amendment.

Under Site Law, a new permit is issued the first-time development on a parcel exceeds the size threshold triggering the need for such a permit. A Site Law permit applies to the whole parcel. All subsequent development on the parcel, unless exempt from permitting by statute, requires either a permit amendment or minor revision. This means, for example, that development of a large-scale water bottling facility on undeveloped property would require a new Site Law permit. Once issued, construction of a 45,000 square foot expansion would require a permit amendment. Additionally, construction of a new 25-acre, 5 MW solar project on an undeveloped portion of the same parcel would require an amendment to the existing Site Law license. Construction of the same solar project on a different parcel, however, would require a new permit as opposed to an amendment. Similarly, construction of a land-based aquaculture facility on a previously undeveloped site would require a new Site Law permit, while construction of the same facility at former paper mill site already subject to a Site Law permit would require a permit amendment. The majority of amendments issued by the Department are Site Law amendments.

Under the Stormwater Management Law, a new permit is issued for a project when more than an acre will be disturbed. Subsequent modification of the approved stormwater management plan or additional, contiguous development that is part of the same larger project likely would require a permit amendment. Small changes that fall within the definition of minor revision, such as a reduction in the number of parking spaces and associated paved area, likely would not rise to the level of change warranting an amendment.

Under NRPA, a new permit is issued for activity that may impact a protected natural resource. NRPA permits authorize specific activity and are rarely amended. For example, if a NRPA permit is issued to authorize 20,000 sq. ft. of wetland fill as part of construction of an shopping

---

an acre and is part of the federal National Pollutant Discharge Elimination System (NPDES) program grounded in the federal Clean Water Act. NOIs function similarly to PBRs.

center and three years later the developer wants to fill 7,500 sq. ft. more of wetland in order to construct additional buildings, a new NRPA permit would be required for the new wetland fill, as opposed to amending the previously issued permit that authorized separate activity.

In addition to the issuance of new permits, permit amendments, and minor revisions, the Department issues a number of other types of orders. For example, the Department issues orders approving the transfer of existing permits to new owners and confirming that conditions of a previously issued permit have been satisfied by the permit holder.

### **C. Department Organizational Structure and Staff Responsibilities**

Organization – The Department is organized into four bureaus, one of which is the Bureau of Land Resources. Within this bureau, the Land Division administers Site Law, NRPA, and the Stormwater Management Law. The Land Division includes a Division Director and four supervisors (Environmental Specialist IVs) who each lead a team. Each team includes licensing staff and field services staff. With the exception of one Biologist I who provides field services, all other licensing and field services staff are Environmental Specialist (ES) IIs or IIIs. Additionally, stormwater engineers are assigned to these teams.<sup>2</sup>

Licensing Staff – The Land Division includes 17 licensing positions. This total includes two ES III positions created in the FY 2022/2023 Biennial Budget. The position break-out is as follows:

- 13 Senior Project Managers (ES IIIs)
- 4 Project Managers (ES IIs)

Consistent with their respective job specifications, ES IIIs may handle more complex and more controversial matters. As a result, ES IIIs handle nearly all Site Law permitting and some NRPA and Stormwater permitting. ES IIs handle primarily NRPA permitting.

The primary responsibility of licensing staff is reviewing permit applications and drafting permitting decisions (i.e., orders). This licensing function include: pre-application and pre-submission meetings, site visits to property proposed for development, reviewing application materials, identifying outstanding questions or application deficiencies and requesting additional information from applicants, coordinating external review of applications with experts in other state agencies (e.g., DIFW, DMR, MHPC, MNAP, MGS), coordinating internal review of applications with stormwater engineers and with individuals with geotechnical, hydrological, water quality or other areas of expertise as appropriate), and drafting the order with the permitting decision.

Licensing staff responsibilities also include post-construction site inspections to assist permittees with ongoing compliance, participating in the bureau's "on-call" program (receiving and responding to public inquires on one of three designated phone lines serving different regions), attending professional training, and recording necessary data (e.g., wetland impact tracking data) and archiving files in accordance with retention policies.

---

<sup>2</sup> The FY 2022/2023 Biennial Budget added five positions with the Land Division. As part of the assimilation of these positions, adjustment to the existing four-team organizational structure is anticipated.

To fulfill these responsibilities, licensing staff's time should be apportioned as shown in Table 1

<b>Table 1. ES II &amp; ES III Licensing Staff Core Responsibilities</b>	
<b>Licensing</b>	70%
<b>Compliance</b>	15%
<b>On-Call</b>	10%
<b>Other</b>	5%

ES IV staff directly supervise all licensing staff and their work. With respect to the permitting process this includes: answering questions about regulatory requirements, coordinating with challenging applicants, participating in project meetings and site visits with applicants, and reviewing orders. These supervisors also serve as project managers due to overall workload within the Department and frequently handle particularly complex permitting matters.

Stormwater Engineering Staff – The Licensing Division includes six engineering positions, including three positions created in the FY 2022/2023 Biennial Budget:

- 1 Sr. Environmental Engineer
- 3 Environmental Engineers
- 2 Assistant Engineers

These positions will form a stormwater team once filled. At present, however, only one Environmental Engineer position is filled and a recently hired Assistant Engineer is scheduled to join the Department in December. Recruiting and retaining staff in these positions historically has been difficult and that trend continues in a strong job market for engineers in Maine. The last five times the division has posted an opening for an Environmental Engineer an average of one qualified candidate (i.e., a Professional Engineer) has applied, with the applicant pool ranging from zero to two candidates satisfying the minimum qualifications for the position. Only one of four individuals offered a position has accepted and joined the Department. This individual has since left the Department. Recruiting to fill vacant positions is underway.

Engineering staff are responsible for reviewing stormwater management plans and related engineering included in Site Law permit applications and Stormwater Management permit applications. As part of this review, they participate in pre-application meetings, prepare written review comments on application submissions, and coordinate with engineers working for applicants to ensure stormwater management systems are adequately designed to protect water quality and meet the applicable environmental standards. Engineering staff also are responsible for administering the 5-year recertification program for approved stormwater management systems. This involves inspecting existing systems to ensure they are functioning properly and coordinating with property owners to make sure they are adequately maintaining their systems and that the systems are functioning properly. Engineers also are responsible for conducting compliance inspections and assisting with enforcement of stormwater violations.

Field Services Staff – The Licensing Division includes eight field services staff. The position break-out is as follows:

- 1 Biologist I
- 4 ES IIIs
- 3 ES IIs

Field services staff provide field determinations, assisting members of the public who call with questions about the natural resources on their property by visiting the property to view what resources are present. As part of this assistance, staff help property owners understand what options they have for completing their desired project and what types of permits may be required. These staff also assist local code enforcement officers by answering similar types of questions about development proposals presented to local municipalities that may impact natural resources regulated at the state level. In addition, field services staff respond to citizen complaints, often regarding activity on nearby or abutting property. These staff also are responsible for compliance inspections and for pursuing enforcement action where violations cannot be resolved voluntarily by the property owner. Formal enforcement involves preparing notices of violation and preparing and negotiating consent agreements, which involves coordination with the Office of the Attorney General and ultimately requires approval by the Board of Environmental Protection.

Along with field-related work, field services staff participate in the Land Division's "on-call" program and process nearly all of the NRPA and Stormwater PBRs received by the Department, as well as accepting Maine Construction General Permit NOIs. Over the past decade, on average staff have processed over 1,759 PBRs and over 198 NOIs, annually. The annual averages for the last five years are 1794 and 258, respectively.

To fulfill these responsibilities, field services staff's time should be apportioned as shown Table 2.

<b>Table 2. Field Services Staff Core Responsibilities</b>	
<b>Complaint Response &amp; Compliance Assistance</b>	30%
<b>PBR Processing &amp; Assistance</b>	20%
<b>Field Determinations</b>	20%
<b>Formal Enforcement</b>	10%
<b>On-Call</b>	10%
<b>Other</b>	10%

The same ES IV staff who directly supervise licensing staff also supervise field services staff. Currently, the four teams with the Land Division contain both licensing and field services staff.



## II. Permitting Volumes and Processing Times

### A. Permit Numbers for 2020 and the Last Decade

2020 was a busy year for permitting within the Department. For example, the Land Division:

- Issued more individual land orders – 830 – (Site Law, NRPA, Stormwater) in 2020 than in any other year in the last decade;
- Issued 59 new Site Law orders for projects in 2020; this is a 59% increase over the next highest year in the last decade, 2019;
- Issued more NRPA and Stormwater PBRs – 1919 – in 2020 than in any other year in the last decade; and
- Accepted more Maine Construction General Permit NOIs in 2020 than in any other year in the last decade.

Figure 1 below illustrates the overall permit volume for the last decade, showing that the five highest annual totals have all come in the last five years, with 2020 being the busiest. While permit numbers were high in 2020, and 2021 is on track to be just as busy, these overall permit volumes are generally consistent with levels over the last decade, as shown in Figure 1. One exception, however, appears to be an upward trend in new Site Law applications; these are applications for new, larger developments. The scale of Figure 1 does not show the upward trend in new Site Law applications; the graph in Figure 2 focuses solely on this category of permit over the last decade and clearly shows the notable increase.

Figure 1

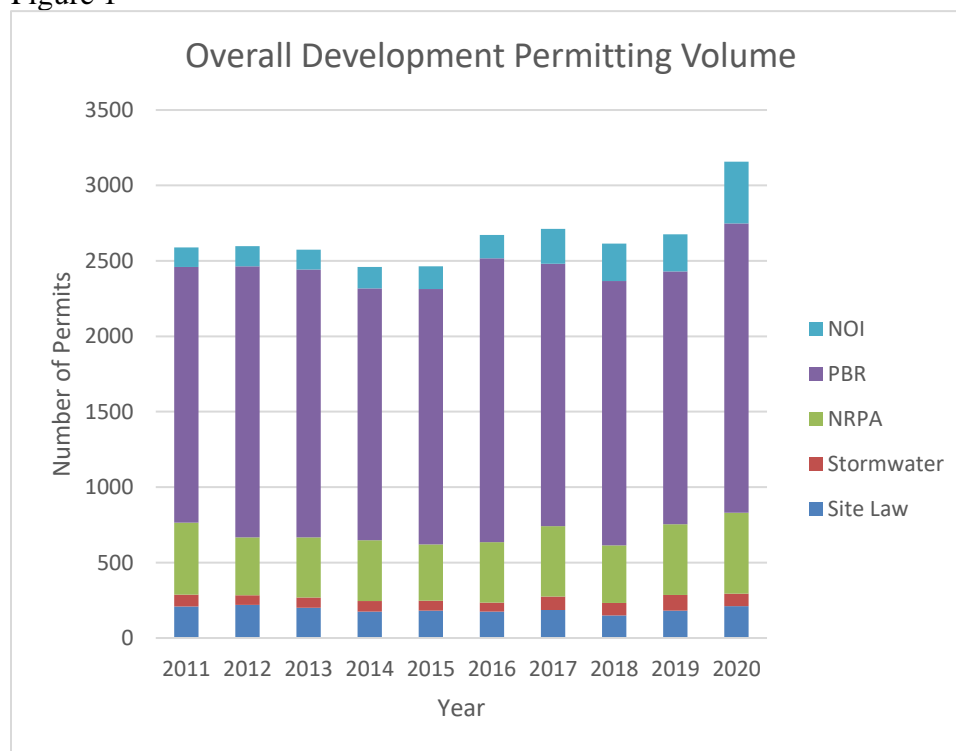
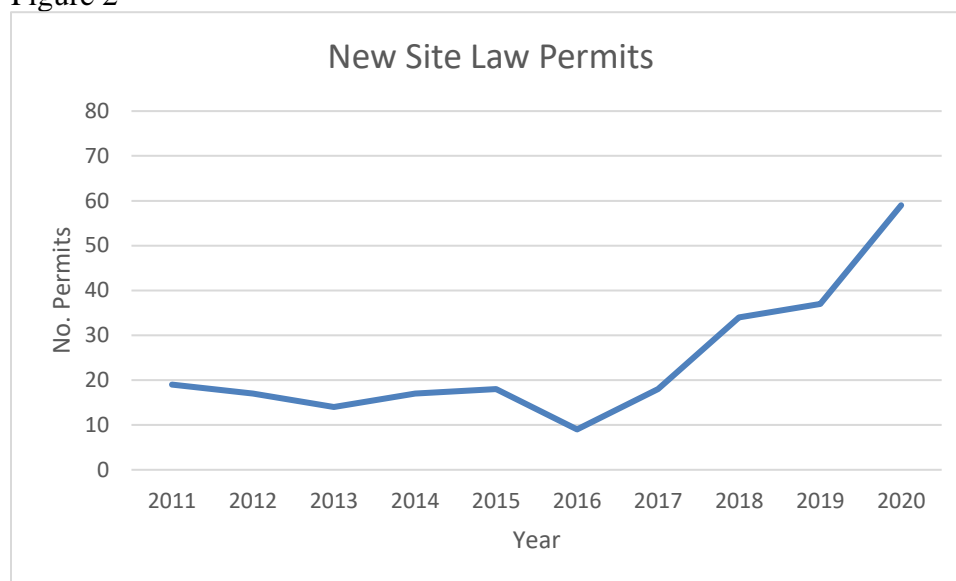




Figure 2



## B. Processing Times for Site Law Permits

Consistent with the request in P.L. 2021, ch. 62 that the Department evaluate what staffing levels would be necessary for the Department to process permit amendments and minor revisions within the same timeframe set by the Commissioner for new permits, the Department reviewed processing times for these three categories of Site Law orders – new permits, amendments, and minor revisions – over the last decade. The Department focused on Site Law orders because these orders are the most complex and time consuming and account for the overwhelming majority of amendments and minor revisions.

In the figures below, for each of these three types of Site Law orders the number of permits per year and average processing time for that year are plotted on the same graph. A figure comparing the processing times for new permits, amendments, and minor revisions also is included.

When reviewing these figures, and particularly average processing times, key caveats include:

- Processing times are based on the date an application is accepted as complete for processing and the date an order is signed. In the interim, an application may be placed on “hold,” for example, when the Department is waiting for material from an applicant. The time an application may be on hold is not subtracted from or otherwise reflected in the processing time calculations.
- Many factors influence processing times, such as: the nature and complexity of environmental impact associated with the project, whether the permitting is tied to an enforcement matter, the quality of the application, the need for additional information and the speed with which it is provided, review by outside agencies, and the participation of

members of the public opposed to the project, as well as staff workload, staffing levels, and staff efficiency.

- A small number of applications with long processing times may significantly influence the averages. With the exception of identifying and reviewing several amendment applications that had very long processing times (exceeding 700 days), the Department has not evaluated the potential influence of unique permitting matters on average processing times.

Observations drawn from review of Site Law permit volume and processing time data include:

- The average processing time for new Site Law applications has remained relatively consistent over the last decade, even with a significant increase in new permit applications.
- Over the last decade, the average processing time for new Site Law applications has been roughly two weeks longer than for amendment applications, which in turn has been longer than for minor revisions. Between 2011 and 2020 the average processing times have been:
  - 131 days – New Site Law Permits
  - 115 – Amendments
  - 54 – Minor Revisions
- Over the last four years (2017-2020):
  - The Department has had the four highest overall permit totals of the decade.
  - The number of new Site Law permits has trended upwards, with the three highest totals for the decade coming in the last three years.
  - The combined number of new Site Law and Site Law amendment applications has been trending upward, with the four highest totals for the decade coming in the last four years. These two types of applications are the two most time consuming for licensing staff to process and influence the efficiency with which staff can process all categories of permits.
  - The average processing times across these four years (2017-2020) are higher than the average times for the last decade as a whole. The averages over the last four years were: 137 days for new Site Law permits, 144 days for amendments, and 78 days for minor revisions.
    - While in 2020, Site Law amendment applications were processed over a period 10 days shorter, on average, than applications for new Site Law

permits, in 2017 and 2018 the processing of amendment applications took roughly three weeks longer than applications for new permits, and in 2019 the processing of amendments applications, on average, took two days longer than applications for new permits.

- A portion of the increase in the average processing time for amendment applications in recent years may be attributable to a small number of unique permitting matters with long timelines (see discussion below), however, the general trend notably coincides with the period with the greatest number of new and amendment Site Law applications and the highest overall application volume. Two large projects, the NECEC transmission line and Nordic Aquafarm's land-based aquaculture facility also were under review during this time period and together involved several thousand hours of Land Division staff time.
- The additional stormwater engineering staff positions created in the most recent budget are expected to alleviate one significant pinch point in the permitting process if the Department is able to attract qualified candidates to fill these positions. The two additional ES III positions also will help reduce the high workload for existing project managers. The Department anticipates, however, that at the present permit application volume, as well as at levels equivalent to the lower five-year average and even lower 10-year average, permitting workloads will exceed what project managers reasonably can be expected to handle while fulfilling all of their job responsibilities. (See Section III, below, and Table 4.)

Figure 3

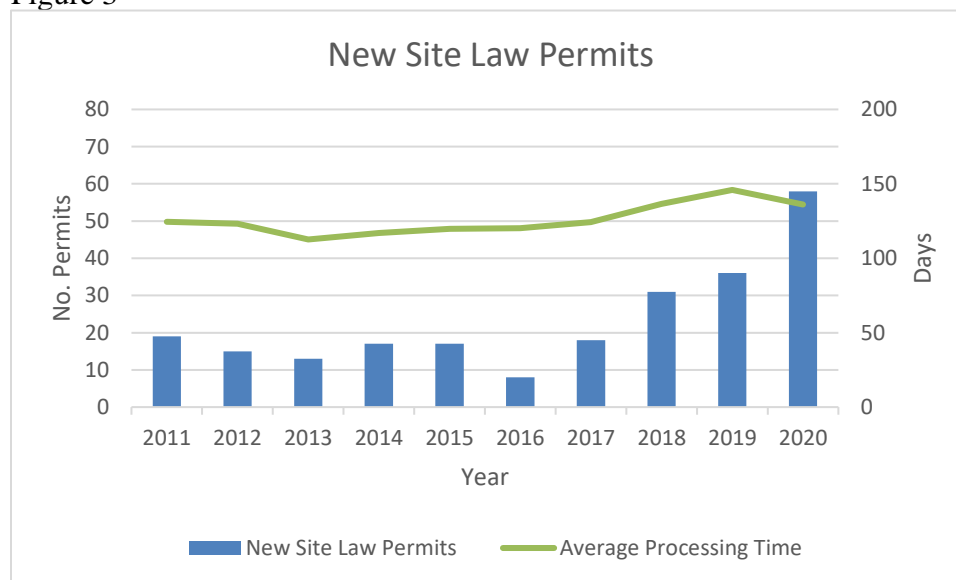


Figure 4

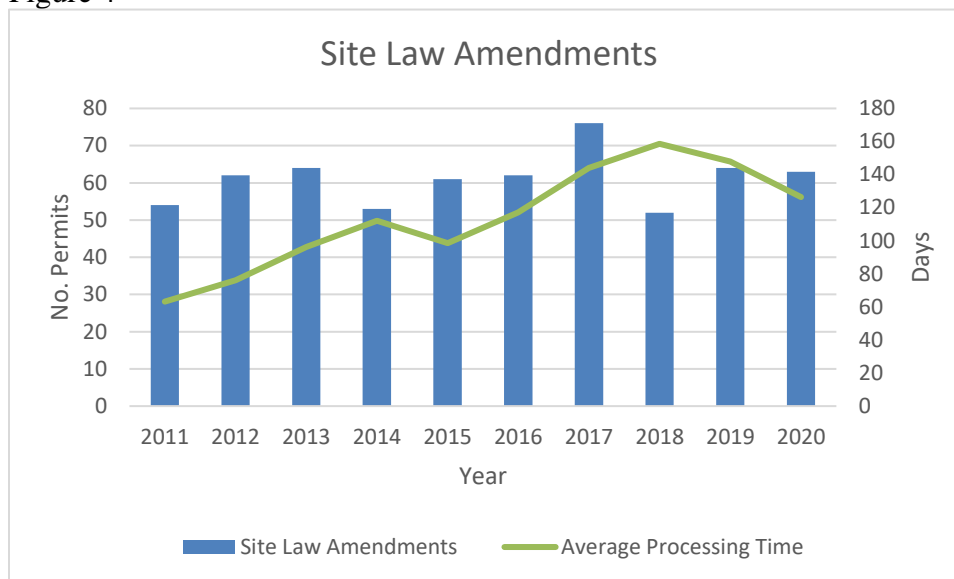


Figure 5

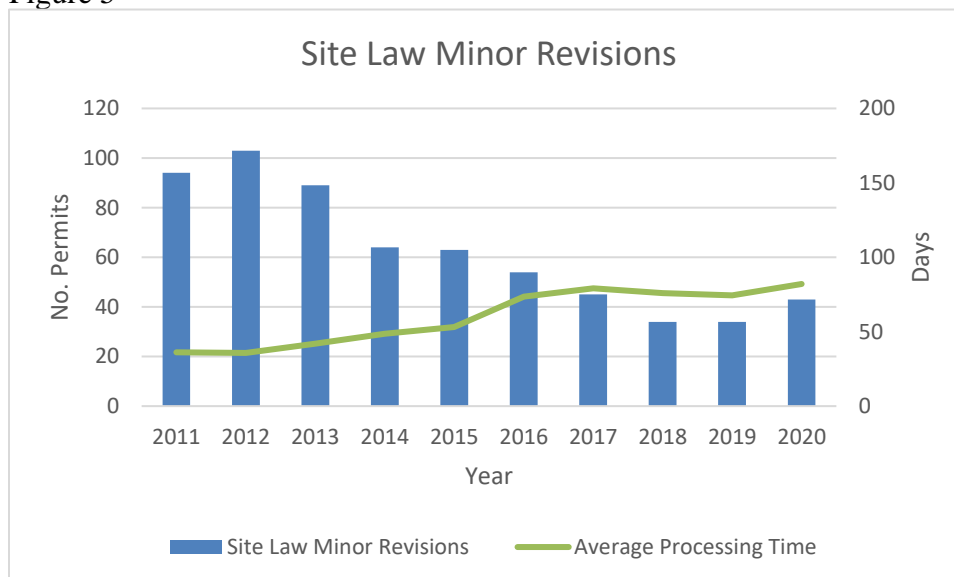
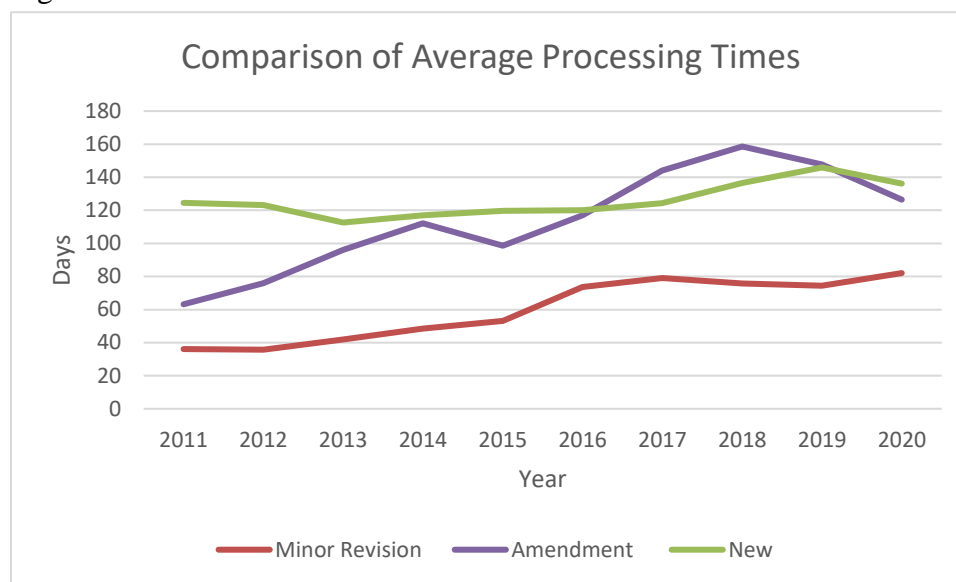


Figure 6



As noted above, multiple factors effect permit processing times. In addition, when calculating averages (the averages here are the mean), a small number of permits with long processing times can significantly influence the average. Understanding the factors behind these types of permitting events can provide helpful context when reviewing processing time.

The Department has not reviewed all, individual permitting actions over the last decade in order to identify and understand potential outliers. The average processing time for Site Law amendment applications in 2018, however, was sufficiently notable that the Department investigated whether isolated applications influenced the average.

Between 2011 and 2020, the Department approved over 600 Site Law amendment applications. The two with the longest processing times, by a considerable amount, were both approved in 2018. One application pended for 721 days and the other for 1,138 days. The former involved an airport runway expansion within the watershed of lake most at risk; a range of stormwater treatment and mitigation alternatives had to be explored because there was no remaining phosphorus allocation for the expansion. The latter involved unlicensed activity with significant stormwater implications and wetland impacts. The after-the-fact permitting of this activity was intertwined with two related enforcement actions, one initiated by the Department and the other initiated by the U.S. Environmental Protection Agency due to the seriousness of the violations.

Both with respect to the average processing time for Site Law amendment applications in 2018, and when reviewing average processing times generally, the ability for a small number of projects to influence averages is important to remember.

Overall, when looking at the data reflected above, the combined number of applications for new Site Law permits and Site Law permit amendments appear to be an important influence on permit processing times.

### **III. The Challenge of Balancing Permitting Efficiency Goals with Delivery of Other Environmental Services**

#### **A. The Consequences of a Singular Focus on Permitting**

The Department recognizes the importance of efficient permit review to applicants, whether an individual or business. This is reflected in the priority given to permitting within the Land Division.

Licensing staff are expected to devote 70% of their time to licensing activities. (See Table 1, above). Due to permit application volumes and the priority given to permitting, the actual time these staff focus on licensing exceeds 90%, with the majority of the remainder of their time devoted to responding to on-call inquiries. As a result of the focus on permitting, licensing staff conduct few, if any, compliance inspections. This means, for example, they do not have the opportunity to see how well the permits they write are working and whether the permits are achieving the intended environmental outcome.

Even focusing nearly all of their time to processing permits, licensing staff do not have the capacity to manage all land licensing activity. Supervisors also carry their own project load and former Land Division staff who now work elsewhere in the Department are regularly called upon to manage projects. While supervisors are expected to manage the review of some permit applications, in recent years their project loads have been significant enough that it comes as a tradeoff. For examples, supervisors have less opportunity to review, evaluate, and improve internal practices and or the environmental policies they administer. Notably, it has been years since any of the rules administered by the Land Division have been updated.

The work of field services staff, too, is influenced by licensing activities – specifically the review and processing of NRPA and Stormwater PBRs. Over the last decade, the Department has processed an average of 1759 PBRs per year. The most recent five-year average (2016-2020) is over 1,794 PBRs annually. At these levels, field services staff devote approximately 30% percent of their time to processing these applications. One result of this focus on permitting is that few compliance assistance inspections are conducted by field services staff and that all requests for field determinations cannot be accommodated.

#### **B. Finding the Right Balance**

Using permitting data for the last decade, and based on experience regarding the approximate number of staff hours it takes to process different types of applications, the Department has assessed what percentage of licensing staff time must be devoted to licensing to accommodate different permit volumes. As part of this basic modeling, how different numbers of staff can reasonably be expected to handle different permitting volumes can be evaluated.

The Department has broken Site Law, NRPA, and Stormwater Management permits into four subgroups for each of these statutory permit types: new permits, amendments, minor revisions, and other. The “other” subcategory captures condition compliance orders, permit transfers, and review of the transfer of delegated authority to municipalities for certain Site Law and

Stormwater Management applications. The result is a total of 12 subcategories of permit types (e.g., new NRPA, Site Law amendment, Stormwater minor revision, Site Law other). For each of the subcategories, the Department has tabulated the permit numbers for the last decade and calculated the annual average for both the last decade (2011-2020) and for the last five years (2016-2020).

For each of these subcategories, the Department also estimated the number of staff hours expected to be required, on average, to process applications. These estimates are included in Table 3, below. All aspects of licensing are included in these estimates, such as pre-application and pre-submission meetings, site visits, application review and information requests, responding to public inquiries, order drafting, etc. These estimates do not include the hours associated with “special fee” projects<sup>3</sup> or preparation of draft permitting decisions for the Board of Environmental Protection in conjunction with appeals. The time for these unique projects is estimated to be 1,200 hours of staff time, cumulative across all licensing staff, annually.<sup>4</sup>

Table 3

Permit Subcategory	Days	Hours
NRPA, new	5	40
NRPA, amendment	3	24
NRPA, minor revision	2	16
NRPA, other	1	8
Stormwater, new	4.5	36
Stormwater, amendment	3	24
SW, minor revision	2	16
SW, other	1	8
Site Law, new	12.5	100
Site Law, amendment	10	80
Site Law, minor revision	2	16
Site, other	1	8

Accounting for how applications are apportioned between ES II Project Managers and ES III Senior Project Managers (e.g., all new Site Law applications are processed by ES IIIs), the Department is able to evaluate what percentage of staff time is expected to be devoted to licensing activities at different permit volumes and different staffing levels, assuming 1,904 work hours in a year.<sup>5</sup> Consistent with the job expectation for ES II and ES III licensing staff,

<sup>3</sup> Special fee projects are those expected to require a considerable amount of additional staff resources to process. Applicants are required to reimburse the Department for the actual cost of processing the application through payment of a “special fee,” as opposed to payment of the standard application fee. Most wind power projects are designated “special fee” projects. Other recent examples include the NECEC transmission line proposal and Nordic Aquafarms’ proposed land-based aquaculture facility.

<sup>4</sup> For context, it is not uncommon for the management of the application process and related amendments for a grid scale wind power project to involve 1,500 to 2,000 hours of Land Division staff time. The Maine Power Reliability Program transmission line upgrades, which did not involve a hearing or any appeals, required over 2,000 hours of Land Division staff time and the Nordic Aquafarms’ project has involved over 2,000 hours of Land Division staff time.

<sup>5</sup> 248 work days – 10 days of vacation = 238 days. 238 days x 8hrs/day = 1904 hrs



approximately 70% of their time should be devoted to licensing activity. Above this percentage other important responsibilities have to be curtailed and, ultimately, permitting efficiency is impacted and employee retention becomes more challenging.

Table 4 shows the relationship between different permit application volumes – specifically the 10-year average and five-year average – and staffing levels, and the percentage of working hours licensing staff devote solely to licensing. Note that in high volume permit application years such as 2020 (and 2021 based on the applications to date), the percentage of staff time devoted to licensing was higher than those shown in Table 4. This is because the volume of permit applications in 2020 was higher than both the 10- and five-year averages.

An example of how to review Table 4 follows. In 2020, the Land Division was staffed with 4 ES II positions and 11 ES III positions responsible for processing individual permit applications. At that staffing level and at a permit application volume equal to the average for the last five years, the time needed to process those applications would exceed staff capacity even if 100% of staff time had been devoted to licensing. In 2020, application numbers exceeded the most recent 5-year average. This resulted in supervisors assuming a large permit load and former Land Division staff still working at the Department assuming licensing responsibilities. These staffing levels also gave rise to concerns about permit processing times as reflected in multiple pieces of legislation.

In the most recent budget, two ES III staff were added to the Land Division, increasing the total number of ES III licensing staff to 13. The benefit of this addition is reflected in Table 4. The Department's analysis suggests these 13 staff will have to devote 89% percent of all working hours to manage a permit application volume equal to the five-year average. As further reflected in Table 4, an increase of ES III licensing staff from 13 to 16 with a permit application volume equal to the five-year average would require these staff to devote approximately 72% of their time to licensing. At this level of staffing and volume of applications, ES III licensing staff would be positioned to fulfill their job responsibilities in alignment with the expectations for their position and to process applications – whether for new permits, amendments, or minor revisions – in better alignment with the expectation of applicants and members of the public.

Beyond these examples, the impact of adjusting staff numbers or of future fluctuations in permitting volumes is reflected in Table 4.

Table 4

Comparison of Licensing Staff and Permit Volume % Total Work Hours Devoted to Licensing							
Position	Env. Specialist II			Env. Specialist III			
No. Staff	4	5	6	11	13	15	16
5 yr. avg. (2016-2020)	102%	81%	68%	105%	89%	77%	72%
10 yr. avg. (2011-2020)	96%	77%	64%	99%	84%	73%	68%

The Department conducted a similar type of analysis with respect to the processing of PBRs by field services staff. Presently, these staff devote approximately 30% of their time to processing PBRs. This focus takes away from other important services these staff are expected to provide, especially field determinations that help individuals understand what resources exist on their property, their development options, and any permitting requirements. This is a valuable service that helps protect the environment and prevent potential violations.

As outlined in Table 2, a better balance of field service staff time, consistent with the delivery of other core services, is achieved if 20% of their time is focused on PBR processing and related assistance (e.g., helping individuals design their projects to qualify for a PBR). Table 5 shows the relationship between the number of field services staff and the time each staff person, on average, spends processing PBR applications under the five- and 10-year PBR average for application volume. Although the average number of PBR applications received annually over the last five years is slight higher than the decade as a whole, the difference is not significant enough to affect the percentages in Table 5; they are the same under both PBR volume scenarios. Because both ES II and ES III staff process PBRs, this table does not identify the type of Environmental Specialist. Presently, there are eight field services staff positions within the Land Division: 2 in Portland, 2 in Augusta, 1 in Bangor, and 1 in Presque Isle. As illustrated in Table 5, for field services staff to be able to focus approximately 20% of their time on licensing and the remainder on the range of services they are expected to provide, three to four additional position would be needed.

Table 5

<b>Comparison of Field Services Staff and PBR Volume % Total Work Hours Devoted to PBRs</b>				
<b>Position</b>	<b>Env. Specialist II/III</b>			
<b>No. Staff</b>	<b>8</b>	<b>10</b>	<b>11</b>	<b>12</b>
<b>5 yr. avg. (2016-2020)</b>	29%	23%	21%	19%
<b>10 yr. avg. (2011-2020)</b>				

#### IV. Conclusion

Regardless of the number of permit applications received by the Department or number of fellow team members, staff within the Land Division are committed to reviewing applications, helping applicants achieve their development goals, and ensuring Maine's environment is protected in accordance with the controlling statutory programs. The discussion and analysis above provide background and context regarding Land Division staff's responsibilities, as well as a framework for evaluating how staffing levels and permit application volumes influence the service delivered by the Department. With respect to the processing of individual permit applications under Site Law, NRPA, and the Stormwater Management Law, two additional ES II positions, three additional ES III positions, and full employment of all existing positions in the division would be necessary to fulfill expectations for the Department's land licensing program at application levels below those presently being experienced, but equivalent to the five-year average.

With respect to the processing of PBRs by field services staff and balancing this licensing function with the range of other services they are expected to provide, continued curtailment of

services such as field determinations and inspections aimed at promoting compliance is expected at the existing staffing level and reasonable anticipated PBR volume. The Department is pursuing outside assistance through contract and cooperative agreements to assist with licensing and coordinating with the Bureau of Human Resources to attract qualified applicants for existing openings. The Department also will consider additional staffing requests in future budget proposals after filling existing vacant positions.